

Federal Reserved Water Rights – The Negotiated Settlement Option

by

**WRIA 1 Watershed Management Project
Instream Flow Working Group**

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The Lummi Nation and the Nooksack Tribe have federal reserved water right claims to water in WRIA 1 for 1) the purposes of their reservations as permanent, economically viable homelands, and 2) for instream flows sufficient to support a harvestable surplus of salmon. In addition, the U.S. Forest Service and the National Park Service have federal reserved water rights claims for the purposes of these federal reservations.

The purpose of this paper is threefold: to provide a general overview of federal reserved water rights, to briefly describe a negotiated settlement approach used to resolve conflicts that occur when water is allocated by states prior to the quantification of federal reserved water rights, and to identify the significance of federal involvement in water rights settlements. Several reference documents are identified that provide much more detailed information on the topics of federal reserved water rights and negotiating solutions to water right conflicts.

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FEDERAL RESERVED WATER RIGHTS

What are federal reserved water rights?

The concept of federal reserved water rights originated in a 1908 decision by the United States Supreme Court in the lawsuit *Winters v. United States*, 207 U.S. 564. This decision, which resolved a lawsuit brought by the United States to protect the water rights of an Indian tribe for agricultural irrigation, states that when the federal government established a reservation, the federal government implicitly reserved a quantity of water necessary to fulfill the purposes of the reservation. Tribal water rights have been found to date from “time immemorial” for uses that predate the reservation (e.g., fishing) and from the date of the reservation for uses that originate with the reservation (e.g., agriculture). The *Winters* doctrine is the basis for federal reserved water rights for Indian reservations, national forests, wildlife refuges, national parks, military bases and other federal reserves. References that provide additional information about federal reserved water rights for Indian tribes and nations include Getches (1990) and MacDonald (2002).

What does the term “purposes of the reservation” mean?

The purposes of a reservation are determined after careful examination of the documents that established a reservation. Frequently originating documents (e.g., treaty, statute, or executive order) for Indian reservations imply or explicitly state that the reservation was established to be a “permanent home” for a particular Indian tribe. Once established, Indian reserved water rights may encompass a variety of tribal needs, such as domestic, commercial, municipal, industrial, agricultural, recreational, cultural, and other uses. In two water right lawsuits in Washington State, federal courts determined that the purposes of the Colville Indian Reservation (*U.S. v Walton*) and the Spokane Indian Reservation (*U.S. v Anderson*) included preserving the tribes’ traditional hunting and fishing lifestyles. On the base of this determination, water rights were awarded for a replacement fishery in one case and instream flow for a fishery in the other.

What are off-reservation Indian water rights?

The Point Elliot treaty and similar treaties negotiated by Governor Stevens in the mid-1800s include specific language reserving rights to hunt, fish, and gather at all usual and accustomed grounds and stations that are off the reservation. Some courts have ruled that under this treaty language, the tribes impliedly retained off-reservation rights to sufficient water to sustain the fish and the habitat in order to have a meaningful right to hunt and fish at the usual and accustomed grounds and stations. In the ongoing Yakima River adjudication (*Ecology v Aquavella*) the Superior Court determined, and the Washington State Supreme Court affirmed, that the Yakama Nation has “time immemorial: rights for instream flow for fisheries both on- and off-reservation based on the tribe’s treaty reserved rights.

Are federal reserved water rights the same as state water rights?

No. The laws and treaties of the United States preempt state law – states may not limit or curtail exercise of federal reserved water rights. In addition, with some exceptions, under state water law water must be put to continuous, beneficial use to maintain and preserve a water right. The term, “use it or lose it” is commonly used to summarize this provision in state water law. In contrast, federal reserved water rights are “reserved” and not subject to forfeiture for non-use. Finally, with some exceptions for municipal rights, state water rights generally cannot be changed with respect to the point of diversion, place of use, or purpose of use without obtaining state authorization. In contrast, federal reserved on-reservation water rights are generally believed to be able to be used for any and all of the purposes of the reservation.

What is a “priority date” and why is it important?

Water in Washington State is allocated pursuant to the prior appropriation doctrine. This doctrine, commonly summarized by the term “first in time, first in right”, states that the first person or organization to initiate a water right that they perfect with due diligence has the most senior and, therefore, the highest priority right to use the water. Water rights have a priority date which, under the Washington State surface and ground water codes, is the date that a completed water right application is received by the State or, in the case of wells that do not require a water right permit or for uses of water that predate the state water code, the date that the water right was first initiated by notice or construction of works completed with due diligence. Absent due diligence, the priority date of pre-code rights is the date water was first put to beneficial use. In times of shortage, earlier or “senior” water right holders have priority over later or “junior” appropriators. This senior right is entitled to be fully satisfied before any other water use.

Because most Indian communities were established well before non-Indian settlement, and because Indians had relied on water to support hunting, fishing, and gathering at all usual and accustomed grounds and stations since time immemorial, Indian reserved water rights recognized by the courts have had very senior priority dates. By state law, the Department of Ecology (Ecology) must ensure that senior water rights will not be impaired by a newly authorized water use, a water rights transfer, or a change of water rights. Since federal reserved water rights generally are the most senior water rights, can be large in size, and are not quantified, they have the potential to create serious and substantial water management problems in many watersheds. Until these more senior water rights are quantified, water uses authorized under state law are uncertain and more likely to lead to disputes as to whether such rights are impaired.

NEGOTIATED SETTLEMENTS

How are conflicts over federal reserved water rights resolved?

Conflicts over federal reserved water rights are generally resolved either through litigation or negotiation in the context of litigation. Historically, federal reserved water rights were quantified through lengthy and expensive lawsuits in a process known as a general stream adjudication. Because of the time and expense associated with litigation, and the risk of a court or administrative agency imposing an unsatisfactory outcome (and the divisive effect of litigation on a community), some parties involved in conflicts over federal reserved water rights have elected to negotiate a settlement of claims. A negotiated settlement of Indian water rights can provide the tribes, state, federal government, and private water users a mechanism to develop creative solutions where all parties can benefit.

What are some of the models used to negotiate Indian reserved water rights disputes?

There are a number of models used to negotiate Indian reserved water rights disputes including:

1. One model is simply that a general stream adjudication is started in state court bringing in the United States and tribes. In the context of that litigation the state, private parties, federal government and tribal parties agree to settlement discussions. A settlement is developed that is acceptable to all parties and filed with the adjudication court. Often settlements include and are contingent upon water development projects that must be authorized and funded through federal and state governments.
2. Montana took a comprehensive approach to water rights adjudication and the Montana Legislature established Montana's Reserved Water Rights Compact Commission in 1979 as part of the statewide general stream adjudication process. The Compact Commission is composed of nine members appointed by the Governor, the legislature and the Attorney General with a multi-disciplinary staff of eleven professional and technical members. The claims of the tribes and the federal agencies are suspended from adjudication in the Montana Water Court while the Compact Commission is negotiating them. Settlements negotiated by the Commission on behalf of the State of Montana are ratified by the Montana Legislature and the Tribal Councils and approved by the appropriate federal authorities. In some instances, approval by the U.S. Departments of Justice and the Interior are sufficient. In other cases, where federal authorization or federal appropriations are needed to implement provisions of the settlement, congressional approval is required. Public meetings are held during the initial stages of negotiations and again when negotiations are nearing completion.
3. Under Oregon's statutes, the Director of the Water Resources Program is authorized to enter into negotiations with tribes and the federal government to settle federally reserved Indian water rights. The statute requires that the negotiation process is open to the public and that the settlement be finalized by being submitted to the "appropriate" court. It further provides that anyone who has water rights affected by the settlement has standing in court to challenge the settlement. If the challenge is upheld, the court remands the settlement back to the negotiators for further action. In past negotiations, the Oregon Water Resources Department formed a state team consisting of state agencies for the negotiations. The state also created a "public advisory group" made up of all key affected non-tribal parties. The state team met with the advisory group on a regular basis throughout the negotiations.
4. A fourth model is the negotiated settlement process. Attachment 1 is a flow chart of the settlement process from Checchio and Colby (1993). Once the

parties have decided that they need to negotiate a settlement, the following general steps are taken:

- preparations,
- reaching local agreement,
- final authorization by state and local parties,
- federal review and approval,
- tribal approval,
- court approval,
- funding the settlement, and
- implementation.

As summarized in Attachment 1, each of these steps have a number of components.

Have there ever been negotiated settlements over Indian Water Rights?

Yes, as shown in Attachment 2, there have been at least 18 congressionally ratified negotiated settlements of Indian water rights since 1978. In addition, there are other tribal-state compacts codified in state law that have not been ratified by Congress.

What do the negotiated settlements usually address?

Most settlements include the following basic provisions (Checchio and Colby 1993):

- quantity and source of water entitlement,
- quality of water supplies,
- reliability of water sources,
- physical structures,
- management flexibility,
- waiver of claims,
- economic development funds,
- protection of existing uses, and
- water marketing provisions.

In addition to these basic provisions, settlements may contain provisions for joint resource management (including planning, monitoring, implementation) and for dispute resolution.

What references explain the negotiation process involving federal reserved water rights?

There are a number of good references that better describe both how negotiations over Indian water rights are conducted and current and pending Indian water rights settlements (e.g., Checchio and Colby 1993, Hare 1997, and Sly 1988). In general, the parties to successful negotiations over Indian water rights include the affected Indian tribe(s), the federal government, the state, and non-Indian water interests. In 1990, the federal government established criteria and procedures for the negotiation of federal reserved water rights (33 Fed. Reg. 9223, March 12, 1990). The guidelines establish criteria for evaluating proposed Indian water rights settlements and outline procedures for federal participation in negotiations. The federal guidelines only apply to the federal agencies involved in the negotiations – they do not apply to tribe(s), the state, Congress, or non-Indian water interests. The intent of the guidelines is to notify the settlement parties of how the federal negotiation team will conduct themselves and what criteria will be used by the administration to evaluate settlements. In summary, if the Department of Interior decides that the federal government should take part in a negotiated settlement, the guidelines require the appointment of a federal negotiation team to coordinate the participation of the various federal parties (e.g., Department of Justice, Department of Interior, Office of Management and Budget, Environmental Protection Agency, Department of Agriculture). All federal team communications with other negotiating parties are to be made through the Team Chair.

SIGNIFICANCE OF FEDERAL INVOLVEMENT

Does the federal government need to be a party to Indian Water Rights Settlements?

Yes, the federal government has a trust responsibility to Indian tribes and nations. This trust responsibility provides federal protection for Indian resources (e.g., timber, water, fisheries) and federal assistance in resource development and management (Checchio and Colby 1993). Although this trust relationship may entitle Indian tribes to receive specific benefits not available to other citizens, these benefits are not based on race. The benefits that flow from this trust relationship are derived from the government-to-government relationship between the United States and Indian tribes (Checchio and Colby 1993). Federal goals in Indian water rights settlements include the following (Checchio and Colby 1993):

- fulfilling trust responsibility,
- protecting rights of other federal reserves,
- protecting endangered species,
- protecting water quality,
- balancing financial obligations,
- fulfilling legal obligations, and
- protecting federal project water users (if they exist in a watershed).

What is the significance of federal involvement in Indian water rights settlements?

The significance of federal involvement in Indian water rights settlements include:

1. Tribal governments can not provide certainty and finality to the other participants unless the federal government, as its trustee, also agrees.
2. All parties with water rights claims would be involved in settlement negotiations.
3. The federal government can fulfill its trust responsibilities to tribes without compromising its obligations to clean water, endangered species, and other federal reserves. That is, federal involvement provides an opportunity to ensure that a settlement and its associated modifications to water management practices also complies with the Clean Water Act and the Endangered Species Act.
4. The federal government can resolve its liability associated with damages claims brought against it by Indian tribes and nations for breach of trust (i.e., failure to protect Indian water resources). In order to settle breach of trust damages claims brought against it by Indian tribes and nations, the federal government's financial contribution to settlements can be substantial. Federal contributions to Indian water rights settlements have ranged from \$3.4 to \$125 million.
5. Federal contributions to settlements have included funding to affected non-tribal interests and tribal governments to support conservation measures (e.g., lining irrigation canals, reclamation and reuse, loan forgiveness, dam construction/improvements to increase storage), other water management facilities (e.g., new or replacement water distribution systems, stream gaging/monitoring network), stream restoration/improvement projects, and land acquisition.

References:

Checchio E. and B.G. Colby. 1993. Indian Water Rights: Negotiating the Future. University of Arizona.

Getches, David H. 1990. Water Law in a Nutshell, Second Edition. West Publishing Co., St. Paul MN.

Hare, J. 1997. Indian Water Rights, An Analysis of Current and Pending Indian Water Rights Settlements. The Confederated Tribes of the Chehalis Reservation and the Bureau of Indian Affairs.

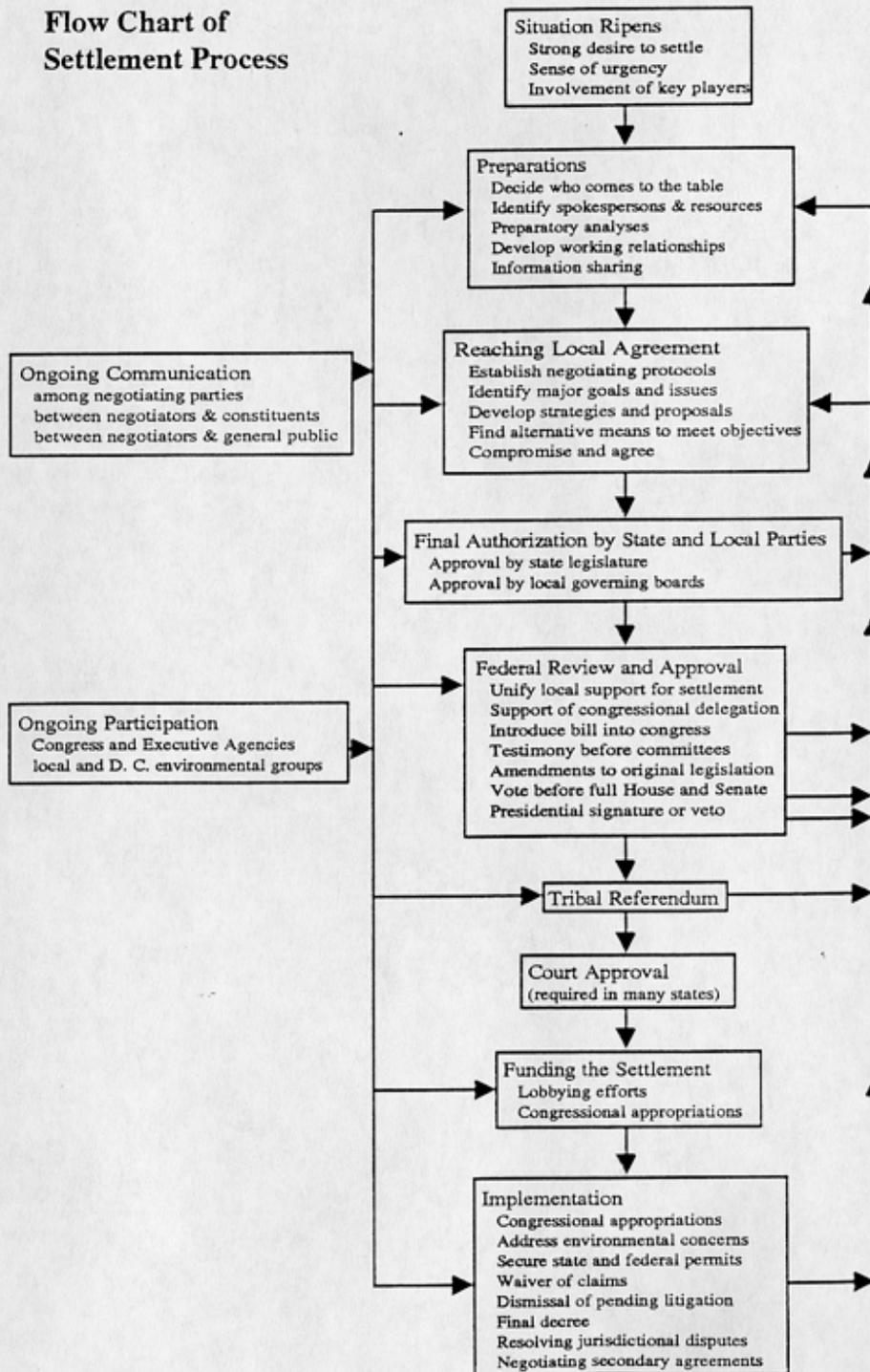
McDonald, Tom. 2002. Indian Treat-Reserved Water Rights, Chapter Three-A

Sly. 1988. Reserved Water Rights Settlement Manual. Island Press.

ATTACHMENT 1

Figure 6

Flow Chart of Settlement Process



Checchio E. and B.G. Colby. 1993. Indian Water Rights: Negotiating the Future. University of Arizona.

ATTACHMENT 2

SETTLEMENTS APPROVED BY CONGRESS

NAME / CITATION	TRIBE(S)/STATE(S)	SIGNIFICANT FEATURES OF SETTLEMENT/ QUANTITY (AC-F/YR)	TOTAL EXPENDITURES
<p>Ak-Chin Indian Water Rights Settlement Act Pub.L. 95-328, 92 Stat. 409 (1978), <i>amended</i>, Pub.L. 98-530, 98 Stat. 2698 (1984), <i>amended</i>, Pub.L. 102-497, 106 Stat. 3258 (1992), <i>amended</i>, Pub. L. 106-285, 114 Stat. 878 (2000).</p>	<p>Ak-Chin Indian Community of Papago Indians of the Maricopa, Ak-Chin Reservation ARIZONA</p>	<p>First Indian water settlement; Federal government and Indian Community were only parties to original settlement; No local cost share provision required; One of two settlements fully federally funded; Unrestricted water marketing and use under 1992 Amend. Allows off-reservation leasing in certain nearby counties; Surface water imported from foreign source to satisfy entitlement; Federal government agreed to deadline for implementation; Federal government assumed total liability for cost of failure to deliver; 85,000 afa Legislation in 2000 gave the tribe authority to enter into either options to renew a lease or renewals of a lease for no more than the original term of a lease up to 100 years long, whereas it earlier denied any post-100 year option. The amendment also provides that the tribe may not permanently alienate the water at issue.</p>	<p>Federal: <ul style="list-style-type: none"> • Total of \$29.2M to Indian Community (not including \$15M in damages) (emphasis added); • estimated \$50K for feasibility study • \$3.4M to Indian Community for economic development • \$25.3M as loan forgiveness • Total of \$27.2M to irrigation district; • \$9.4M for construction & conservation; • \$17.8M as loan forgiveness </p>
<p>Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 Pub.L. 101-618; 104 Stat. 3289 (1990).</p>	<p>Paiute-Shoshone Tribe of the Fallon Reservation and Colony NEVADA</p>	<p>Original intent to settle tribal claims for Federally promised irrigation system; Developed into claims for reserved rights; Secretary to identify water sources subsequent to settlement; Environmental dilemmas in two river basins required complex and interconnected settlements with two tribes; Development Fund established to improve irrigation system and enhance economic development on the Reservation; Federally approved Tribal management plan required for administration; Interstate Allocation Agreement required for reservoir operations; Limited marketing subject to State law; <i>See also</i>, Truckee-Carson Pyramid Lake Water Rights Settlement Act; 10,588 afa</p>	<p>Federal <ul style="list-style-type: none"> • \$43M for Fallon Paiute Shoshone Tribal Development Fund (i.e., \$3M in 1992, and \$8M each year thereafter until 1997). </p>
<p>Fort Hall Indian Water Rights Act of 1990 Pub.L. 101-602; 104 Stat. 3059 (1990).</p>	<p>Shoshone-Bannock Tribes of the Fort Hall Indian Reservation IDAHO</p>	<p>Heavy reliance on unallocated Federal storage space required to satisfy Tribes' <i>Winters</i> entitlement and to mitigate impacts to local water users within a highly developed system; Water bank authorized which will allow the Tribes to lease their water rights to local water users off-Reservation; Tribes allowed to lease all or part of water entitlement on the Reservation; Tribal Development established in addition to Federal funds provided to develop a reservation water management system; Instream flow protection allowed (whereas instream flow protection a contentious issue in the Wind River-Big Horn litigation); Flexible use of Tribes' water on reservation permits traditional uses including agriculture, fish, and wildlife, and environment; Three member Intergovernmental Board established to mediate or resolve disputes; 581,031 afa</p>	<p>Federal <ul style="list-style-type: none"> • \$10M to Tribal Development Fund • \$7M to Tribes for development of a reservation water management system • \$5M appropriated to BIA for acquisition of lands and grazing rights adjacent to Grays Lake to enhance the operation and management of the FHIP as well as providing collateral benefits for the Fish and Wildlife Service Refuge at Grays Lake. • Federal contract storage rights or studies related to settlement (appropriations unknown) </p>

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<p>Fort McDowell Indian Community Water Rights Settlement Act of 1990 Pub.L. 101-628, 104 Stat. 4480 (1990).</p>	<p>Fort McDowell Indian Community ARIZONA</p>	<p>Complex multi-party water purchases, exchanges, and storage Arrangements; Much controversy over water supply and sources; Secretary allowed to identify and acquire water sources subsequent to Settlement; Indian Community to receive indigenous water supplies from the Verde River; Off-reservation leasing of CAP water limited to 99 year lease with City of Phoenix Community Development Fund established to enhance economic development; Federal loan provided to Indian Community to construct delivery system; Environmental preservation and studies required prior to most water acquisitions; Instream flow protection to protect endangered species and river habitat: 36,350 afa</p>	<p>Federal</p> <ul style="list-style-type: none"> • \$23M for Community Development Fund • Land and water purchases from unidentified sources including 13,933 afa of CAP water purchased from HVID (appropriations unknown) • Environmental studies associated with land and water purchases (appropriations unknown) • 25-year contract with SRP to store Kent Decree water rights (appropriations unknown); Community able to use some of its Kent Decree water depending on availability and canal conditions) • \$13M loan to Indian Community (not considered a Federal contribution) (emphasis added) <p>State/Local</p> <ul style="list-style-type: none"> • \$2M for Community Development Fund • \$5M up-front payment for 99 year lease to city of Phoenix (not considered a contribution) (emphasis added) <p>Tribe</p> <ul style="list-style-type: none"> • \$13M in Federal loan monies to construct delivery systems
<p>Jicarilla Apache Tribe Water Settlement Act of 1992 Pub.L. 102-441, 106 Stat. 2237 (1992).</p>	<p>Jicarilla Apache Indian Tribe NEW MEXICO</p>	<p>Subcontracting or marketing allowed on or off reservation; Lease or subcontract terms limited to 99 years; Subcontracts subject to state law; Significant Secretary approval process prior to subcontracting; Tribal water right can not be forfeited or relinquished for nonuse; Much discussion of the "Law of the River" and prohibiting interstate marketing; Significant environmental compliance and conservation measures required; 40,000 afa</p>	<p>Federal</p> <ul style="list-style-type: none"> • \$6M to Trust Fund • Estimated \$1,056,250 in non-reimbursable construction costs • Waiver of OM&R costs (amount unknown)

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<p>Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 Pub.L. 102-374, 106 Stat. 1186 (1992).</p>	<p>Northern Cheyenne Indian Tribe MONTANA</p>	<p>Tongue River Dam repair and enlargement major part of settlement; Much discussion over administration and jurisdiction over tribal water right and Tongue River Dam Project; Three member Board set up to resolve disputes; Tribe allowed to administer water right after adopting Tribal Water Code; Water marketing and transfers allowed on and off the reservation; Most off-reservation marketing subject to State law; Tribal water right may be used on the reservation for any purpose and without regard to State law; Ten-year marketing moratorium with Crow Tribe for water stored in the Big Horn Reservoir; Trust Fund unrestricted except for per capita payments; 91,330 afa</p>	<p>Federal</p> <ul style="list-style-type: none"> • \$21.5M to the Cheyenne Indian Reserved Water Right Trust Fund; • \$31.5M for use in the repair and enlargement of the TRDP; • Environmental compliance (estimated at \$2M); • Tribe's proportionate share of OM&R costs for water stored behind the Tongue River Dam (estimated at \$3,000 annually until 1997 and \$28,000 annually thereafter); - \$3.5M for fish and wildlife enhancement on the TRDP; <p>State</p> <ul style="list-style-type: none"> • Repayment of the \$11.5M loan to the Tribe; • \$5ableM to TRDP for contract costs; - \$4.2M to the TRDP in non-contract costs. <p>Tribe</p> <ul style="list-style-type: none"> • OM&R costs and capital costs associated with water used or sold for M&I purposes from Big Horn Reservoir (amt. unknown)
<p>Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 Pub.L. 100-512, 102 Stat. 2549 (1988).</p>	<p>Salt River Pima-Maricopa Indian Community of the Salt River Reservation ARIZONA</p>	<p>Complex and creative multi-party water exchanges, lease-backs, and storage arrangements (including effluent exchange) between two Indian Communities, seven Phoenix area cities, and three irrigation districts; Indian Community arranged to receive indigenous water supplies from the Salt River, Verde River, and groundwater beneath the Reservation (e.g., very small amount of imported water used to satisfy entitlement); Significant, "equitable" local cost sharing required by Federal government; Marketing of water prohibited except for lease-exchange agreement with Phoenix (water uses unrestricted on reservation); Very large Community Trust Fund established to develop and maintain facilities and enhance economic development; Provision to resolve allottee water claims; 122,400 afa</p>	<p>Federal</p> <ul style="list-style-type: none"> • Total of \$47,470,000 to the Salt-River Community Trust Fund • \$10M for CAP facility construction (not considered a contribution since entirely allocable to P.L. 90-537, the underlying CAP authorization) <p>State/Local</p> <ul style="list-style-type: none"> • \$55,933,000 from local water users for contributing 32,000 afa of water (utilizing a value of around \$1,800 per afa), • \$9M from local cities put in escrow to acquire 22,000 afa of Colorado River water; • \$3M from the State of Arizona to community Trust Fund; • \$16M in exchange for allocated CAP water (not considered a contribution since it is compensation for a 99 year lease agreement) <p>Tribe</p> <ul style="list-style-type: none"> • \$2M to Community Trust Fund

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<p>San Carlos Apache Tribe Water Rights Settlement Act Pub.L. 102-575, 106 Stat. 4740 (1992), <i>tech. amend.</i>, Pub.L. 103-435, 108 Stat. 4572 (1994), <i>amended</i>, Pub.L. 105-18, § 5003, 111 Stat. 181 (1997).</p>	<p>San Carlos Apache Indian Tribe ARIZONA</p>	<p>Directs the Secretary of the Interior to reallocate an additional specified amount of water from the Central Arizona Project for the San Carlos Apache Tribe. Provides for the diversion of 7,500 af/yr from the Black River Requires the Tribe or its lessee to pay any water service capital charges or municipal and industrial subcontract charges for any water use or lease from the effective date of the Act through FY 1995. Directs the Secretary to designate for the benefit of the Tribe such active conservation capacity behind Coolidge Dam on the Gila River as the Secretary is not using to meet the obligations of the San Carlos Irrigation Project (SCIP) for irrigation storage. Limits any water stored by the Tribe to the dam's first spill water. Establishes the San Carlos Apache Tribe Development Trust Fund within the Treasury to contain the funds appropriated for it, the funds provided by Arizona under the agreement, and the funds received from the tribal water leases authorized by this Act. Directs the Secretary to carry out all necessary environmental compliance during the implementation phase of this settlement. Authorizes appropriations. Directs the Secretary to establish a groundwater management plan for the San Carlos Apache Reservation. Declares that concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the Tribe's governing body. A 1997 amendment settled a right-of-way dispute with Phelps Dodge Corporation and provided for a lease and exchange of 14,000 af/yr of Central Arizona Project water.</p>	<p>Federal • \$38.4M for Development Fund (94%) Land and water purchases from Planet Ranch located on Bill Williams River in Arizona (appropriations unknown) • Environmental studies, compliance, and mitigation costs to BR associated with land and water allocations or purchases (appropriations unknown) • Construction, operation, maintenance and replacement costs for CAP water facilities (appropriations unknown) State/Local • \$3M for Development Fund (6%) • Purchase of around 58,735 afa of surface water (amount unknown)</p>

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<p>San Luis Rey Indian Water Rights Settlement Act of 1988 Pub.L. 100-675, 102 Stat. 4000 (1988).</p>	<p>La Jolla, Ricon, San Pasquale, Pauma, Pala Bands of Mission Indians CALIFORNIA</p>	<p>Problems with water source identification (e.g., originally proposed water from Central Valley Project amended to require "supplemental" water from lining the All American Canal); Conservation measures required to fulfill Bands' water entitlement by lining the All American Canal in order to reduce seepage; Existing water canals and systems used to deliver "supplemental" water; No new facility construction required to be financed by the Federal government; "Equitable allocation" of local water supply required reallocation of San Luis Rey River system evenly between Bands and non-Indian users; \$30M Development Fund established; Indian Water Authority established as inter-tribal entity to market water and administer Development Fund; 16,000 afa</p>	<p>Federal</p> <ul style="list-style-type: none"> • \$30M for Development Fund • Lining of All American Canal (appropriations unknown) • Use of existing delivery systems (amount unknown) • Groundwater recharge program (amount unknown) <p>State/Local</p> <ul style="list-style-type: none"> • Purchase of water that is surplus to the Bands' needs on the reservations (amount unknown) • Use of existing local water delivery systems to convey Bands' share of local water to the reservations (amt. unknown) • O&M and replacement of existing delivery systems for San Luis Rey water (amount unknown) • Costs associated with Warner Well Field (estimated to range from \$1.5 to \$3.18M) <p>Bands</p> <ul style="list-style-type: none"> • O&M costs associated with delivery of supplemental water through existing facilities; • Costs associated with Warner Well Field (estimated at over \$2M annually).
<p>Seminole Indian Land Claims Settlement Act of 1987 Pub.L. 100-228, 101 Stat. 1556 (1987).</p>	<p>Seminole Tribe of Florida FLORIDA</p>	<p>First Indian water settlement in the Eastern United States; No prior litigation preceding water settlement; No Federal funding required; Compact compromises between the <i>Winters</i> doctrine and riparian doctrine; Compact gives Tribe absolute preference to ground water; Tribal water right perpetual in nature and not subject to State renewal; Compact allows Tribe to issue permits and administer its water rights; Compact allows Tribe significant participation in water and land related decisions; Compact gives Tribe jurisdiction to manage its water resources; Compact given force of Federal law for purposes of enforcing the tribe's rights and obligations in Federal District Court</p>	<p>None</p>

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NAME / CITATION	TRIBE(S)/STATE(S)	SIGNIFICANT FEATURES OF SETTLEMENT/ QUANTITY (AC-F)/YR	TOTAL EXPENDITURES
<p>Southern Arizona Water Rights Settlement Act Pub L. 97-293, 96 Stat. 1274 (1982), <i>tech. amend.</i>, Pub L. 102-497, 106 Stat. 3256 (1992).</p>	<p>San Xavier and Schuk Toak Districts, Tohono O’Odham Nation (formerly Papago) ARIZONA</p>	<p>Water provided from CAP allocation and reclaimed effluent water from Tucson; Nation guaranteed a “firm” delivery of water even in dry seasons; Federal government assumed liability for failure to deliver water and replacement costs; Construction costs of federal facilities required to deliver entitlement is entirely allocable to Pub.L. 90-537, (the underlying CAP authorization), not SAWRSA; Limited off-reservation leasing in Tucson AMA; Two independent trust funds established, a Tribal and Cooperative Fund; Settlement and implementation delayed due to dispute over ownership and allocation of water between allottees and Nation; 66,000 afa</p>	<p>Federal</p> <ul style="list-style-type: none"> • Estimated \$1M to establish water management plan and conduct certain studies; • \$5.25M to “Cooperative Fund”; • \$15M to Nation’s Trust Fund; • Up to \$3.5M, if needed, to cover fluctuations in construction costs for “on-reservation” improvements only (amount unknown); • Up to \$3.3M in annual contingent liability for replacement water for damages for failure to deliver entitlement (to be paid from interest of “Cooperative Fund”); • Estimate \$65M for construction of Phase B of Tucson Aqueduct; estimated \$50M to acquire reclaimed effluent water and increase capacity of the Tucson Aqueduct to deliver such water; • Estimated \$19M to improve on-reservation irrigation systems; • Unknown amount for O&M; (above amounts not included since costs entirely allocable to P.L. 90-537, the underlying CAP authorization) <p>State/Local</p> <ul style="list-style-type: none"> • \$2.75M from the State of Arizona, \$1.5M from the City of Tucson, and \$1M from local non-Indian users to “Cooperative Fund” • Forgone profits to City of Tucson from contributing 28,200 afa of reclaimed effluent water at cost to Federal government (amount unknown) <p>Nation</p> <ul style="list-style-type: none"> • Estimated \$1M for construction of site specific on-reservation farm ditches, subjugation of land, and O&M cost (to be paid from interest of trust fund)

ATTACHMENT 2

SETTLEMENTS APPROVED BY CONGRESS

NAME / CITATION	TRIBE(S)/STATE(S)	SIGNIFICANT FEATURES OF SETTLEMENT/ QUANTITY (AC-F/T/YR)	TOTAL EXPENDITURES
<p>Truckee-Carson-Pyramid Lake Water Rights Act Pub L. 101-618, 104 Stat. 3294 (1990).</p>	<p>Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation NEVADA (CALIFORNIA)</p>	<p>Environmental dilemma and Endangered Species Act were major issues driving the settlement; Key provision involving reservoir operation and administration requires Interstate Allocation Agreement; Some unidentified water sources to be acquired subsequent to settlement; Economic Development Fund established for economic development on the Reservation; Fisheries Fund established to enhance, restore, and conserve Pyramid Lake fish; Limited water marketing is subject to State law; Municipalities to install water meters for conservation purposes; Environmental dilemmas in two river basins required complex and interconnected settlements with two tribes -- <i>See also</i>, Fallon Paiute-Shoshone Settlement Act; 520,000 afa</p>	<p>Federal</p> <ul style="list-style-type: none"> • \$25M for Pyramid Lake Paiute Fisheries Fund • \$40M to the Pyramid Lake Paiute Economic Development Fund (in five equal annual installments from 1993 to 1997) • Land and water purchases from unidentified sources (appropriations unknown) • Environmental studies associated with land and water purchases (appropriations unknown) <p>State/Local</p> <ul style="list-style-type: none"> • Local conservation acquisitions (contribution unknown)
<p>Ute Indian Rights Settlement Act of 1992 Pub L. 102-575, 106 Stat. 4650 (1992).</p>	<p>Northern Ute Indian Tribe of the Uintah & Ouray Reservation UTAH</p>	<p>Primary purpose of settlement was to resolve claims against the Federal government for breach of Deferral Agreement where United States failed to construct ultimate phase projects of the CUP and Tribe deferred use and development of tribal land and water; One of two settlements fully federally funded (<i>See also</i>, Ak-Chin Settlement); Limited local cost share provisions commencing in the year 2042 for use or purchase of 35,500 afa of tribal water; Monies appropriated to enhance Tribal fish, wildlife and environment in lieu of constructing promised ultimate phase water projects; Off-reservation leasing provision strips tribes' water of its reserved character and exposes tribal water to State law; "Neutral" marketing provisions may allow tribe to sell water in the future depending on "Law of the River"; Largest Development Fund established to enhance economic development and compensate for breach of Federal agreement; Ute Water Compact has not yet been approved by either the Tribe or State; 481,000 afa</p>	<p>Federal</p> <ul style="list-style-type: none"> • Total appropriations: \$198,500,000 (represents damages for breach of Deferral Agreement) • \$45M for Tribal farming operation • \$5M for Cederview Reservoir repair • \$10M for stream improvements • \$500,000 for Bottle Hollow Reservoir clean up • \$10M for recreational enhancement • \$3M for municipal water system • \$125M for Tribal Development Fund • Estimated \$2M per year for 50 years (\$100M) in Bonneville revenues (represents future damages for use of 35,500 afa of tribal water) <p>State/Local</p> <ul style="list-style-type: none"> • 7 percent of the then fair market value of 35,500 afa of Bonneville agricultural water which has been converted to M&I water beginning in the year 2042 (amount unknown)

ATTACHMENT 2

SETTLEMENTS APPROVED BY CONGRESS

NAME / CITATION	TRIBE(S)/STATE(S)	SIGNIFICANT FEATURES OF SETTLEMENT/ QUANTITY (AC-F/YR)	TOTAL EXPENDITURES
<p>Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994 Pub.L. No. 103-434, 108 Stat. 4526 (1994).</p>	<p>Yavapai-Prescott Indian Tribe ARIZONA</p>	<p>Environmental issues, groundwater restrictions, and inability to use prior CAP allocations from the Verde River required Tribe and municipality to relinquish CAP water for alternate sources; Settlement mutually benefited the Tribe and city and required much cooperation; Municipality required to provide Tribe water and sewage services "in perpetuity"; Tribe and city both required to relinquish, assign or sell prior CAP allocations; "Water Replacement Fund" established to manage all money associated with the relinquishment of Tribe's and city's prior CAP allocation; Water Fund, or water bank, to be used by city to acquire new water sources; Water Fund to be used by Tribe to defray its costs associated with water and sewage services and to develop or maintain on-reservation water facilities; Tribe to develop a groundwater management plan in consultation with the State; Allows marketing of effluent generated on-reservation; 1,550 afa</p>	<p>Federal</p> <ul style="list-style-type: none"> • \$200,000 to Water Fund for use by the Tribe to defray its costs associated with Judicial confirmation of the settlement • Such sums as may be necessary to establish, maintain and operate a gauging station on Granite Creek (amount unknown) <p>State</p> <ul style="list-style-type: none"> • \$200,000 to Water Fund for use by the Tribe to defray its costs associated with the water service agreement
<p>Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999 Pub.L. No. 106-163, 113 Stat. 1778 (1999).</p>	<p>Chippewa Cree Indian Tribe MONTANA</p>	<p>Approves and ratifies the Water Rights Compact entered into on April 14, 1997, by the Tribe and the State of Montana. Directs the Secretary of the Interior to execute and implement the Compact. Satisfies any entitlement to Federal Indian reserved water of any tribal member solely from the water secured to the Tribe by the Compact. Authorizes the Tribe, subject to the approval of the Secretary and the State, to transfer any portion of the Tribal water right for use off the Reservation by service contract, lease, exchange, or other agreement. Directs the Secretary: to plan, design, and construct specified water development projects on the Reservation; and at the request of the Tribe, to enter into an agreement with the Tribe to carry out such activity through the Tribe's annual funding agreement entered into under the self-governance program under the Indian Self-Determination and Education Assistance Act. Establishes a trust fund to fulfill the purposes of the Act. Directs the Secretary to perform a feasibility study of Tiber Reservoir water and related resources in North Central Montana to evaluate alternatives for a municipal, rural, and industrial water supply for the Reservation.</p>	<p>Federal</p> <ul style="list-style-type: none"> • FY 1999 feasibility study appropriations = \$1M, FY 2000 = \$3M • \$21M for the Chippewa Cree Fund. • \$13M for on-reservation development. • \$1M for administration costs <p>State</p> <ul style="list-style-type: none"> • Contribution of \$150,000 to be used for water quality discharge monitoring wells and monitoring program, diversion structure on Big Sandy Creek, a conveyance structure on Box Elder Creek, and the purchase of contract water from Lower Beaver Creek Reservoir. • Subject to the availability of funds, the State shall provide services valued at \$400,000 for administration required by the Compact and for water quality sampling required by the Compact.

ATTACHMENT 2

SETTLEMENTS APPROVED BY CONGRESS

NAME / CITATION	TRIBE(S)/STATE(S)	SIGNIFICANT FEATURES OF SETTLEMENT/ QUANTITY (AC-F/1YR)	TOTAL EXPENDITURES
<p>Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act Pub.L. No. 106-263, 114 Stat. 737 (2000).</p>	<p>Shivwits Band of Paiute Indians UTAH</p>	<p>Grants the Band the right in perpetuity to divert, pump, impound, use, and reuse a total of 4,000 acre-feet of water annually from the Virgin River and Santa Clara River systems to be taken as follows: 1,900 acre-feet from the Santa Clara Project and 2,000 af from the St. George Water Reuse Project with first priority to the reuse water provided from the St. George Project; and 100 acre-feet from groundwater on the Shivwits Reservation. Permits the Band to use water from the springs and runoff on the Reservation. Declares that the amount used from such sources will be reported annually to the Utah State Engineer by the Band and requires the amount to be counted against the annual Water Right. Provides that the Shivwits Water Right shall not be subject to loss by abandonment, forfeiture, or nonuse. Authorizes the Band to use or lease the Water Right for: (1) any purpose permitted by tribal or Federal law anywhere on the Reservation; and (2) any beneficial use off the Reservation.</p>	<p>Federal</p> <ul style="list-style-type: none"> \$20M for establishment of Shivwits Band Trust Fund - to be used for infrastructure costs of obligations imposed on the Santa Clara Project, and the St. George Reuse Project to deliver required water to the Band.
<p>Colorado Ute Settlement Act Amendments of 2000 Pub.L. No. 106-554, 114 Stat. 2763 (2000).</p>	<p>Southern Ute and Ute Mountain Ute Tribes, and Navajo Nation COLORADO</p>	<p>Amends the Colorado Ute Indian Water Rights Settlement Act of 1988 to authorize the Secretary of the Interior to complete construction of, and utilize a reservoir and infrastructure to operate facilities to divert and store water from the Animas River to provide a municipal and industrial water supply to the San Juan Water Commission, Animas-La Plata Conservancy District, State of Colorado, La Plata Conservancy District of New Mexico, Southern Ute and Ute Mountain Ute tribes, and Navajo Nation. Construction costs required to deliver each tribe's water allocation shall be nonreimbursable. Authorizes the Secretary to construct a water line to augment the existing system that conveys municipal water supplies to the Navajo Indian Reservation at or near Shiprock, New Mexico. Makes construction costs for the water line nonreimbursable. Authorizes appropriations to the Southern Ute and Ute Mountain Ute Tribal Resource Funds. Establishes the Colorado Ute Settlement Fund in the Treasury and authorizes appropriations to the Fund to complete the construction of Project facilities and the Navajo Nation water line. Requires the construction of facilities, and allocation of water supply to the Indian tribes, provision of funds.</p>	<p>Federal</p> <ul style="list-style-type: none"> \$8M annually from 2002 to 2006 to establish the Southern Ute Tribal Resource Fund, and the Ute Mountain Ute Tribal Resource Fund.

ATTACHMENT 2

SETTLEMENTS APPROVED BY CONGRESS

NAME / CITATION	TRIBE(S)/STATE(S)	SIGNIFICANT FEATURES OF SETTLEMENT/ QUANTITY (AC-F/T/YR)	TOTAL EXPENDITURES
<p>Zuni Indian Tribe Water Rights Settlement Act of 2003 Pub.L. No. 108-34 (2003).</p>	<p>Zuni Indian Tribe ARIZONA</p>	<p>Provides the resources to acquire water from willing sellers for the tribe in Arizona in the Little Colorado River Basin. Grandfathers existing water uses and waives claims against many future water uses. Provides funding necessary to enable the Zuni Tribe to acquire water rights from willing sellers in lieu of having a Federal reserved rights to surface water or groundwater. The Tribe is required to make payments in lieu of all current State, county, and local ad valorem taxes that would otherwise apply if those lands were not held in trust. Funding to restore, rehabilitate, and maintain the Zuni Heaven Reservation, including the Sacred Lake, wetlands, and riparian areas. Requires the Secretary of the Interior to take legal title of specified lands in the Gila and Salt River Base and Meridian into trust for the benefit of the Zuni tribe. Those lands have no federally reserved water right. The U.S. holds all Zuni owned state water rights in trust for the Tribe. Prohibits the United States, except in certain instances, from removing jurisdiction to Federal courts for disputes over intergovernmental agreements entered into under these trust land agreements.</p>	<ul style="list-style-type: none"> • Federal government is to appropriate \$19.25M to the Zuni Indian Tribe Water Rights Development Fund. • The Secretary is to allocate \$3.5M for fiscal year 2004, to be used for the acquisition of water rights and associated lands, and other activities carried out by the Zuni Tribe to facilitate the enforceability of the Settlement Agreement, including the acquisition of at least 2,350 acre-feet per year of water rights. • The Zuni Heaven Reservation restoration is to be accomplished by using \$5.25M in 2004, 2005, and 2006, for a grand total of \$15.75M.

SETTLEMENT PENDING APPROVAL BY CONGRESS

NAME / CITATION	TRIBE(S)/STATE(S)	SIGNIFICANT FEATURES OF SETTLEMENT/ QUANTITY (AC-FT/YR)	TOTAL EXPENDITURES
Arizona Water Settlement Act S. 437, H.Q. 885	Gila River Indian Community, Tohono Oodham Nation ARIZONA	PENDING APPROVAL	

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